STATE OF VERMONT

SUPERIOR COURT
Washington Unit

CRIMINAL DIVISION
Dkt. 877-7-18 Wncr

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| **State of Vermont** | : |
| | : |
| **v.** | : |
| | : |
| **Carlos Inostroza** | : |

## DECISION: MOTION TO WITHDRAW GUILTY PLEAS

### I: Background

On July 13, 2018, Defendant was arraigned on charges of Possession of 1 Gram or More of Heroin, Possession of 2.5 Grams or More of Cocaine, and Possession of 2 Ounces or Less of Marijuana. At the arraignment, bail was set at $50,000, cash or surety.

On January 15, 2019, Defendant pled guilty to all of the charges and received a sentence of 179–180 days to serve, credit for time served. During the change of plea hearing, the State was asked about the rationale for the agreement, at which time the assigned deputy state's attorney indicated that evidentiary issues existed with the case. As Defendant had then served more than 180 days in jail, it was understood that, following the change of plea hearing, Defendant would be released from custody as he had completed his sentences.

On February 5, 2019, Defendant, through his attorney, Avi Springer, Esq., filed a Motion to Withdraw Guilty Pleas, indicating that, given the facts and procedural history of the case, failure to allow withdrawal of the pleas would result in manifest injustice. On February 19, 2019, the State, through Washington County State's Attorney Rory Thibault, filed a lengthy response to the Motion assenting to Defendant's request.

On March 11, 2019, a hearing was held on Defendant's Motion. Defendant was present by phone and was represented by Attorney Springer. The State was represented by State's Attorney Thibault.

### II: Facts

The facts of the case, as well as the procedural history, are not in significant dispute, and can be summarized as follows:[1]

1. On July 13, 2018, the State filed an Information charging Defendant with Possession of 1 Gram or More of Heroin, Possession of 2.5 Grams or More of Cocaine, and Possession of 2 Ounces or Less of Marijuana. The Court found probable cause for the charges based on the sworn affidavits of Berlin Police

[1] The parties agreed at the March 11 hearing that the Court could rely on the State's 2/19/19 Response to Defendant's Motion to Withdraw Guilty Pleas as being an accurate record of the relevant events of the case.

Officers John Helfant and Benjamin Cavarretta. The relevant information contained within the affidavits can be summarized as follows:

a. On July 12, 2018, at approximately 11:00 pm, Berlin Police Officer John Helfant observed a vehicle with VT license plate 1QUEEN. *Affidavit of Probable Cause of Officer Helfant.* As Officer Helfant wanted to talk to the occupants of the vehicle about an unrelated matter, he followed the vehicle, observing it to pull into a parking space. *Id.*
b. After speaking to the rear passengers who had exited the vehicle, Officer Helfant approached the vehicle and identified the operator as Bethany Preus. *Id.* While speaking to Ms. Preus, Officer Helfant observed a crack cocaine rock by Ms. Preus' left leg, and a partial crack cocaine rock in the operator's side dashboard, which he seized as being in plain view. *Id.*
c. Defendant was identified as the passenger in the car through his MA driver's license, which he retrieved from his wallet located within a black backpack near Defendant's feet. *Id.*
d. Defendant is from Springfield, Massachusetts. Defendant told Officer Helfant that he had arrived in Vermont the previous day and was staying with his godmother "Jerry," but he did not know her last name. *Id.*
e. Officer Helfant then advised Ms. Preus and Defendant of "probable cause consent." *Id.* Officer Helfant told Ms. Preus and Defendant that he had probable cause to search the vehicle, the entirety of its contents, and their persons. *Id.* Officer Helfant told the occupants they could allow a search at roadside or require Officer Helfant to seize the vehicle and apply for a search warrant from a judge, and that the "choice was theirs." *Id.* In his affidavit, Officer Helfant wrote, "[b]oth occupants consented to a search of the vehicle, its contents and themselves." *Id.*
f. Berlin Police Officer Benjamin Cavaretta arrived on scene and approached the passenger side of the vehicle, where he could hear Officer Helfant speaking to Ms. Preus about "a consent search of the vehicle." *Affidavit of Officer Benjamin Cavarretta*, 7/13/18.
g. In his affidavit, Officer Cavarretta wrote, "Officer Helfant gained consent to search the motor vehicle and all its contents from PREUS and INOSTROZA." *Id.*
h. A search of the backpack that was located near Defendant's feet, and from which he retrieved his identification, revealed that it contained 1.8 ounces of marijuana, 28.8 grams of crack cocaine, and approximately 1.55 grams of heroin. *Helfant Affidavit.*

2. Defendant pled not guilty at arraignment and the Court set bail at $50,000, cash or surety. Defendant was unable to post bail and, therefore, remained incarcerated.
3. On September 20, 2018, a Felony Scheduling Order was entered into by the State and Defendant, through Attorney Springer. The Order included deadlines for the exchange of documentary records and depositions, and set a projected trial date for April 2019.

4. On November 27, 2018, Attorney Springer requested the body camera footage from the charged incidents.
5. On December 31, 2018, Attorney Springer filed a motion to review bail, proposing Defendant's release into the custody of a responsible adult, specifically Defendant's girlfriend, Jesslyn Viruet, who resided in Springfield, MA. The bail review hearing was scheduled for January 8, 2019.
6. At the January 8 hearing, Ms. Viruet appeared and provided testimony, during which concerns were raised regarding Defendant's release into the custody of Ms. Viruet, including whether the terms of her lease would allow Defendant to reside there. The hearing was continued for one week to allow Ms. Viruet time to investigate the situation and provide further information to the Court. At this same hearing, it was learned that the body camera videos had not been provided to Attorney Springer pursuant to his November 27 request.
7. Prior to the continuation of the bail hearing, which was scheduled for January 15, 2019, the State made the body camera videos available to Attorney Springer.
8. On the evening of January 14, 2019, Attorney Springer reviewed the body camera videos worn by both Officer Helfant and Officer Cavarretta during the July 12, 2018 incident involving Defendant. That same evening, Attorney Springer emailed the deputy state's attorney assigned to the case indicating that, based on his review of the videos, it did not appear that Defendant ever consented to the search of his property. Attorney Springer requested that the charges be dismissed. Attorney Springer further wrote, "[i]n the alternative, if the State is not prepared to dismiss at this point, I suspect that Mr. Inostroza would plead to the charged offenses with an agreement for a time-served sentence (with no probation), rather than remaining incarcerated while we litigate the suppression issue (since I suspect that the Judge is not going to reduce bail and/or approve Ms. Viruet as a responsible adult). I believe he has six months credit at this point."
9. Upon receiving this email, the assigned deputy state's attorney notified State's Attorney Thibault and arrangements were made for the two to view the body camera videos prior to the continued bail review hearing scheduled for the following day.
10. The State's initial reviews of the body camera videos also raised concerns about whether Defendant had consented to the search. After considering available options, the State determined that it was premature to dismiss the charges until attempts to enhance the video and audio were made, as well as legal research was conducted regarding whether Ms. Preus' consent to the search of her vehicle extended to Defendant's property.
11. Prior to the January 15 hearing, Attorney Springer informed Defendant about the apparent inconsistency between Officer Helfant's affidavit and his body camera video, indicating that this could form the basis of a motion to suppress. With knowledge of this potential issue, Defendant elected to change his pleas in exchange for an offer that secured his immediate release from custody and the ability to return home to Springfield, Massachusetts. Defendant has a young child in Massachusetts and, reportedly, struggled with a medical condition while incarcerated, specifically Sickle Cell Anemia.
12. On the evening of January 15, 2019, both State's Attorney Thibault and the deputy state's attorney assigned to the case, again, reviewed the stop, the search, and the

processing to "achieve a better understanding and reconcile the Defendant's apparent consent to search his phone during processing, his apparent lack of consent to the vehicle search, and his non-waiver of *Miranda*." *State's Response [to] Defendant's Motion To Withdraw Guilty Pleas.*

13. On January 16, 2019, the Washington County State's Attorney's Office made preparations to refer the matter to the Vermont Attorney General's Office for review, as well as to the Municipal Manager for the Town of Northfield, where Officer Helfant is now employed as the Chief of Police. On January 17, 2019, a letter, with attachments, and a copy of the body camera footage were provided to the Attorney General's Office and the Town of Northfield. Subsequent to these referrals being made, an investigation was opened by the Vermont State Police into the matter and currently remains pending.
14. On January 25, 2019, the Washington County State's Attorney's Office, pursuant to statutory and ethical obligations, provided notice to defense counsel with active or recent cases involving Officer Helfant about this incident. The notice indicated that it had come to the attention of State's Attorney Thibault that, "Chief John Helfant, of the Northfield Police Department, and formerly of the Berlin Police Department and Vermont State Police, is alleged to have been untruthful in an affidavit of probable cause and search warrant application sworn to during his time as a member of the Berlin Police Department (*State v. Carlos Inostroza*, Docket No. 877-7-18 Wncr, Incident No. 18BL003053)."
15. The State does not object to Defendant's request that he be permitted to withdraw his pleas. During the March 11 hearing, State's Attorney Thibault indicated that, had the State had more time to investigate the matter prior to the January 15 hearing, the State would have dismissed the charges for lack of sufficient evidence to demonstrate Defendant's consent to the search of his property.
16. During the March 11 hearing, a copy of Officer Helfant's body camera video was introduced into evidence.

    a. The video begins with Officer Helfant standing next to a parked vehicle and receiving information regarding the driver of the car, who, apparently, had already been identified as Ms. Preus.
    b. Upon receiving the information from the dispatcher, Officer Helfant told the occupants of the car that he saw a "crack rock." When asked "how much more do you have in the car," Ms. Preus, said, "that's it." Officer Helfant then stated, "that's it?" Ms. Preus responded, "mm-hmm," leading Officer Helfant to respond, "just one crack rock?" Ms. Preus, again, responded, "mm-hmm." Officer Helfant then stated, "that looks like that was one, too, right there," while shining a light in the area of the steering wheel.
    c. Defendant was subsequently identified as the passenger in the car through a Massachusetts photo ID. Defendant also answered questions about how long he had been in Vermont and with whom he was staying. Defendant's responses are audible on the recording, as are his later responses about whether there were weapons or firearms in the vehicle.

d. Several minutes then elapse with limited conversation between Officer Helfant and Ms. Preus and/or Defendant, as Officer Helfant awaits the arrival of another officer.
e. After Officer Cavarretta arrived, Officer Helfant initiated a conversation with Ms. Preus and Defendant about a search of the car. Officer Helfant said that, "the way this works in Vermont, when I have probable cause to search a motor vehicle, okay, is you can allow a search now, or you can require that I seize the vehicle and the entirety of its contents, which means literally, everything in the car, like absolutely everything, including you guys, so you can allow me to search the vehicle and its contents here at roadside or you can require that I seize everything and apply for a search warrant from a judge, and the choice is yours. But, uh, those are your two options here this evening, now that I saw that crack and have it here."
f. Officer Helfant goes on to state that, based on his experience, he knows that there are more drugs in the car, and that it would "probably take us somewhere in the vicinity of 20 to 30 minutes to search both of you and the entirety of the car here at roadside, or if you require that I seize the vehicle and apply for a warrant from a judge, then it's probably not gonna to be 'til tomorrow or even sometime over the weekend, whenever a judge decides to take a look at it, the warrant, but, again, it's totally up to you."
g. The conversation about the search of the car lasted approximately 3 minutes. During that time, Ms. Preus looked at Defendant several times, but Defendant does not appear to communicate anything to Ms. Preus, either through words or gestures. Ms. Preus eventually consented to the search of the car and its contents.
h. At no time did Officer Helfant directly ask Defendant for consent to search his person or his property and, consistent with the representations of the parties, Defendant is not observed on the video, either through words, actions, or gestures, to ever convey his agreement to the search. Rather, Defendant appears to sit silently in the passenger seat.
i. Following Ms. Preus giving consent for the search, she is searched by Officer Brieanna Murphy. Officer Helfant then assists Ms. Preus with getting a sweatshirt, which is also searched, out of the trunk of the car.
j. Officer Helfant then told Officer Cavarretta, "he can go ahead and hop on out," leading Officer Cavarretta to tell Defendant "Alright, Carlos, we're just gonna hop out," while Officer Cavarretta opened the passenger side front door. Defendant was told to leave his cell phones in the car, following which he was searched by Officer Helfant. While being searched, Defendant was wearing a tank top, appears cold, and commented, "it is freezing." Officer Helfant then asked Ms. Preus if Defendant could borrow "one of these," while pulling what appears to be a jacket out of the trunk of the car. The jacket was then searched, and given to Defendant to wear.
k. Officer Helfant then searched the areas where Ms. Preus and Defendant had been seated. During this search, Officer Helfant stated, "I think

she's, I think she may be—" Another officer interjected inaudibly, and Officer Helfant replied, "High on—no, high on crack."[2] The backpack from which Defendant had obtained his identification was found to contain illegal substances. Prior to this search occurring, no further conversation took place between Officer Helfant and Defendant regarding the search.

l. Following the drugs being located, Ms. Preus and Defendant were told to put their hands behind their backs and each were handcuffed. The search of the vehicle and its contents then resumed.

m. While subsequently conducting the search, Officer Cavarretta appears to ask a question about searching the bags in the car, to which Officer Helfant responded, "they both gave permission to search the entirety of the vehicle, their persons, and the contents, so, yes. Because they both gave permission, we don't have to ask them individually about each bag."

17. If Defendant is allowed to withdraw his pleas, it is the State's intention to dismiss the charges.

## III: Conclusions of Law

The rule governing withdrawal of guilty pleas is based on the former federal standard,[3] see Reporter's Notes, V.R.Cr.P. 32, and is contained within V.R.Cr.P. 32(d), which provides:

> A motion to withdraw a plea of guilty or of nolo contendere may be made only by a defendant who is not in custody under sentence. The motion must be made prior to or within 30 days after the date of entry of judgment, except that a defendant whose sentence does not include a term of imprisonment may make the motion at any time . . . . If the motion is made after sentence, the court may set aside the judgment of conviction and permit withdrawal of the plea only to correct manifest injustice.

Defendant filed his Motion to Withdraw Guilty Pleas within 30 days of entry of judgment, and he is currently not under sentence. Consequently, the only remaining question is whether manifest injustice will result if Defendant's Motion is denied.

Rule 32(d) sets forth a "rigorous standard" for post-sentence withdrawal of guilty pleas. Reporter's Notes, V.R.Cr.P. 32. The Reporter's Notes make clear that a post-sentence request to withdraw guilty pleas should be granted only under extraordinary circumstances, such as where there is evidence that the plea was not voluntary, was not made with the advice of counsel, where the prosecution has breached the plea agreement, or where the requirements for taking the plea

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[2] Later, after Ms. Preus requested, apparently through Officer Murphy, that she be allowed to retrieve a pair of snow pants from the car, Officer Helfant stated to another officer, "Snow pants? Why the hell does she need snow pants?" Following the other officer's unintelligible reply, Officer Helfant notes, "She's definitely being affected by the drugs."

[3] In 1983, the Federal Rules replaced the post-sentencing "manifest injustice" standard, after which Vermont's Rule is modeled, with the requirement that defendants file either a direct appeal or a petition for habeas corpus. Reporter's Notes—1983 Amendment, F.R.Cr.P. 32. Vermont has continued to apply the "manifest injustice" standard.

imposed under Rule 11 have not been complied with. *Id.* Thus, "[m]ost, if not all, grounds justifying withdrawal after sentence would also support a reversal on direct or collateral review." *Id.* Indeed, a three-Justice panel of the Supreme Court has explained that the standard for post-sentence withdrawal of pleas is "essentially the same as that applied to collateral attacks in petitions for post-conviction relief." *State v. Pushee*, No. 2008-081, 2009 WL 161983, at *2 (Vt. Jan. 14, 2009) (unpublished mem.) (citing 3 C. Wright, N. King & S. Klein, Federal Practice and Procedure § 539, at 396 (3d ed. 2004)).

The Reporter's Notes explain that the animating principle behind the manifest injustice standard is that "[t]he state should not be subject to the expense and delay involved in the routine grant of a trial after sentencing." Reporter's Notes, V.R.Cr.P. 32. Indeed, in a decision predating the 1983 amendment to Federal Rule of Criminal Procedure 32, the Ninth Circuit explained that the application of the "manifest injustice" standard

> rests upon practical considerations important to the proper administration of justice. Before sentencing, the inconvenience to court and prosecution resulting from a change of plea is ordinarily slight as compared with the public interest in protecting the right of the accused to trial by jury. But if a plea of guilty could be retracted with ease after sentence, the accused might be encouraged to plead guilty to test the weight of potential punishment, and withdraw the plea if the sentence were unexpectedly severe. The result would be to undermine respect for the courts and fritter away the time and painstaking effort devoted to the sentencing process.

*Kadwell v. United States*, 315 F.2d 667, 670 (9th Cir. 1963) (internal footnotes omitted). Thus, it is clear that the rationale for the standard is based on society's interest in having finality in criminal cases, as well as the due administration of justice.

The Vermont Supreme Court has not defined what constitutes "manifest injustice." However, a three-Justice panel of the Court, in *Pushee*, provided some guidance on this issue as it relates to defendants who are placed in a position of having to make difficult decisions while engaging in the plea bargaining process. 2009 WL 161983. In *Pushee*, the defendant was faced with the prospect of either changing his plea or remaining incarcerated on bail. *Id.* at *1. The defendant elected to change his plea, but then moved to withdraw his plea the following day. *Id.* at *2. Defendant argued, in part, that he felt pressured to take the plea because he did not want to miss work or a memorial service for his recently deceased father, and that he did not understand the terms of the plea agreement. *Id.* The trial court denied the motion to withdraw plea, and Defendant appealed. *Id.* The *Pushee* Court affirmed Defendant's conviction, ruling:

> In this case, there is no showing of manifest injustice. Defendant concedes that the district court engaged him in a thorough Rule 11 colloquy, which is designed to assure that defendants make voluntary and knowing waivers of the right to proceed to trial. The essence of defendant's claim is that he accepted the plea agreement only because he was given the choice of either accepting it or remaining in jail. As the trial court concluded, defendant's predicament does not demonstrate that his plea was involuntary. To the contrary, the record demonstrates that defendant made a voluntary and knowing choice after weighing the circumstances, consulting with his attorney on a number of occasions, and

> responding to the court's inquiries as to whether he understood the rights he was waiving. Defendant's attorney did not put undue pressure on him to accept the plea agreement, but rather correctly apprised him of the difficult choice he faced.

*Id.* "Ultimately," the Court held, "defendant was given an accurate assessment of his predicament on October 3, and based on these circumstances, he made a voluntary decision to enter into an agreement requiring him to plead guilty. There is no showing of manifest injustice." *Id.* at *3.

In this case, Defendant does not argue that he misunderstood the plea agreement or that he did not knowingly and voluntarily enter his pleas. To the contrary, Defendant was informed of the potential suppression issue that existed in the case, discussed the issue with experienced counsel, and then chose to enter guilty pleas to the charges to secure his immediate release from jail. Instead, Defendant argues that the "rapidly evolving circumstances" under which he pled guilty, as well as the developments that have occurred since he entered his guilty pleas, warrant allowing Defendant to withdraw his pleas to correct manifest injustice. Defendant's *Motion to Withdraw Guilty Pleas*. As earlier noted, the State does not object to Defendant's Motion.

It is undisputed that all parties to this case learned of the apparent inconsistency between Officer Helfant's body camera footage and his sworn affidavit less than twenty-four hours prior to Defendant changing his plea. Upon being informed of the issue by Attorney Springer, the State worked diligently to investigate the alleged inconsistency, including sending the recording out of the office with the hope of enhancing the audio. However, without more time to fully explore the issue, the State was unwilling to dismiss the charges prior to the scheduled bail hearing on January 15. Attorney Springer conveyed knowledge of the issue to Defendant, along with an offer by the State to resolve the cases with pleas to the charges and credit for time served. Defendant decided to accept the State's offer in order to ensure his immediate release from jail, thereby allowing him to return to Massachusetts, where his young child lives, and, presumably, to address the issues he struggled with in jail relative to his medical condition.

If this Court were to confine its review strictly to the January 15 hearing, the Court could not find that Defendant has met his burden to demonstrate resultant manifest injustice if the Court does not allow withdrawal of his pleas. Prior to Defendant changing his pleas on January 15, Defendant was informed of his options and had the opportunity to fully discuss those options with his attorney. There is no evidence Defendant did not knowingly and intelligently weigh his options and make an informed decision to change his pleas. No argument has been made that Defendant was not fully informed of his rights during the change of plea colloquy, and it is clear that the plea agreement Defendant reached with the State was honored.

However, the Court finds that it does not need to limit its review of the matter to just the January 15 hearing, but, rather, must consider the totality of the circumstances surrounding the change of plea. See *United States v. Howard*, 431 F.2d 244 (4th Cir. 1970) (predicating a ruling on defendant's appeal from the denial of his post-sentence motion to withdraw plea "[u]pon a careful review of the record"); see also, e.g., *State v. Cain*, 816 N.W.2d 177, 187 (Wis. 2012) ("The reviewing court looks at the entirety of the record to determine whether, considered as a

whole, the record supports assertion that manifest injustice will occur if the plea is not withdrawn.").[4]

At the time Defendant changed his plea, he would have had no way of knowing how quickly the State would react to the information raised by Attorney Springer, or how long it would take to resolve the issue while he remained incarcerated in a Vermont jail. Defendant would also have no way of knowing that, the following day, the gravity of the concerns raised by Attorney Springer would lead State's Attorney Thibault to prepare to refer the matter to the Attorney General's Office to investigate the conduct of Officer Helfant, presumably to consider whether criminal charges against the arresting officer are warranted. Defendant would also not have known that, ten days after he changed his pleas, the State would put all defense attorneys on notice that Officer Helfant was alleged to having been untruthful, specifically as it related to Defendant's case. If Defendant could have foreseen these events taking place, it is unlikely that he would have entered into the plea agreement that he did on January 15. For this reason, unlike the defendant in *Pushee*, Defendant could not have received "an accurate assessment of his predicament" before he changed his pleas. 2009 WL 161983, at *3.

Importantly, the State is not claiming any prejudice from Defendant's Motion but, rather, noting the delay in ascertaining the discrepancy between Officer Helfant's affidavit and his body camera footage, and the importance of ensuring integrity in Vermont's justice system, is in agreement with allowing Defendant to withdraw his pleas. See *State v. Gibbons*, 146 Vt. 342, (1985) ("The prosecutor's role passes beyond that of an adversary. He or she is the conscience, not of an ordinary party to a dispute, but of a sovereign whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done." (internal quotations omitted)). Citing evidentiary concerns, the State has represented that it intends to dismiss the charges if Defendant's Motion to Withdraw Pleas is granted. See *State v. Savva*, 159 Vt. 75, 88 (1991) (recognizing, under Article 11 of the Vermont Constitution, "a separate and higher expectation of privacy for containers used to transport personal possessions than for objects exposed to plain view within an automobile's interior[,]" which requires police to obtain a warrant to search the container or proceed under an exception to the warrant requirement); *State v. Birchard*, 2010 VT 57, ¶¶ 19–20, 188 Vt. 172 (holding, under Article 11, that: (1) a driver's consent to search does not extend to the contents of a passenger's closed container; and (2) exclusionary rule applies to evidence seized in violation of this principle).

As a result, the only rationale for adoption of the "manifest injustice" standard offered by the Reporter's Notes to Rule 32, that "[t]he state should not be subject to the expense and delay involved in the routine grant of a trial after sentencing[,]" is wholly inapposite here. See Reporter's Notes, V.R.Cr.P. 32. If the State dismisses the charges, it will incur no expense or delay because there will be no trial. Nor does this case present circumstances which are likely to reoccur.

Defendant currently stands convicted of three drug offenses, two of which are felonies, that the State now concedes that—had more time been available to investigate prior to the change of plea hearing—would have been dismissed for lack of sufficient evidence to demonstrate

[4] Wisconsin adopted the "manifest injustice" standard from a draft American Bar Association Project on Minimum Standards for Criminal Justice, which was in turn adopted from the former Federal Rule 32(d). *State v. Reppin*, 151 N.W.2d 9, 13–14 (Wis. 1967), superseded on other grounds by *State v. Bollig*, 605 N.W.2d 199, 207 n. 6 (Wis. 2000).

Defendant's consent to the search of his property. Unfortunately, the deficiencies with the State's evidence were not discovered until after Defendant had been incarcerated for over six months. The State acknowledges that, contrary to Officer Helfant's representation in his sworn affidavit that Defendant consented to the search of his property, no such consent, either verbally or through actions or gestures, is observable on the body camera footage. Consequently, the concerns go directly to the credibility of the information underlying the charged offenses. See *State v. Finkle*, 2018 VT 111, ¶ 14, 2018 WL 5093027 (where a defendant establishes, by a preponderance of the evidence, that the probable cause affidavit contains false statements made "intentionally, knowingly, or with reckless disregard for the truth[,]" the reviewing court must consider the affidavit "as though accurate, rather than inaccurate, information had been included.").

On these facts, to allow Defendant's convictions to stand would serve to undermine public confidence in the criminal justice system and threaten the integrity of the process. See *State v. Suave*, 159 Vt. 566, (1993) (noting, in context of bail revocation, that "[w]hat threatens the integrity of the judicial process is a question of constitutional dimension."). This is thus the extraordinary case wherein underlying concerns for the "proper administration of justice," see *Kadwell*, 315 F.2d at 670, favor the grant, rather than the denial, of a defendant's post-sentence motion to withdraw his pleas.

Therefore, on these facts, the Court finds that, in order to prevent manifest injustice, Defendant's request to withdraw his pleas of guilty to the charged offenses must be granted.

## IV: Order

Defendant's Motion to Withdraw Guilty Pleas is GRANTED. In the event the charges are not dismissed by the State prior to April 15, 2019, the cases will be set for status conference at the end of April 2019.

Dated at Barre, Vermont, on this 2nd day of April, 2019.

Mary L. Morrissey
Vermont Superior Court Judge